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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARLENE L. WATSON,

Plaintiff

v.

ANDREW SAUL,* Acting Commissioner of
Social Security,

Defendant

Case No. 2:18-cv-01019-BNW

ORDER

13 This matter was referred to the undersigned magistrate judge on consent under 28 U.S.C.
14 § 636(c). (ECF Nos. 22, 26). The case involves review of an administrative action by the
15 Commissioner of Social Security denying Plaintiff Marlene L. Watson's application for disability
16 insurance benefits and supplemental security income under Titles II and XVI of the Social
17 Security Act. The court reviewed Plaintiff's motion for reversal or remand (ECF No. 19), filed
18 January 22, 2019, and the Commissioner's response and cross-motion to affirm (ECF Nos. 24,
19 25), filed March 22, 2019. Plaintiff did not file a reply.

20 **I. BACKGROUND**

21 **1. Procedural History**

22 On December 15, 2014, Plaintiff applied for disability insurance benefits and
23 supplemental security income under Titles II and XVI of the Act, respectively, alleging an onset
24 date of June 10, 2014. AR¹ 249-258. Plaintiff's claim was denied initially and on
25 reconsideration. AR 112-121, 132; 173-176. A hearing was held before an Administrative Law

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^{*} Andrew Saul has been substituted for his predecessor in office, Nancy A. Berryhill, pursuant to
Federal Rule of Civil Procedure 25(d).

28 ¹ AR refers to the Administrative Record in this matter. (Notice of Manual Filing (ECF No. 15)).

1 Judge (“ALJ”) on December 22, 2016. AR 48-97. On May 18, 2017, the ALJ issued a decision
2 finding that Plaintiff was not disabled. AR 22-33. The ALJ’s decision became the
3 Commissioner’s final decision when the Appeals Council denied review. AR 1-6. Plaintiff, on
4 June 5, 2018, commenced this action for judicial review under 42 U.S.C. § 405(g). (*See* Compl.
5 (ECF No. 1)).

6 **II. DISCUSSION**

7 **1. Standard of Review**

8 Administrative decisions in social security disability benefits cases are reviewed under 42
9 U.S.C. § 405(g). *See Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). Section 405(g)
10 provides that “[a]ny individual, after any final decision of the Commissioner of Social Security
11 made after a hearing to which [s]he was a party, irrespective of the amount in controversy, may
12 obtain a review of such decision by a civil action . . . brought in the district court of the United
13 States for the judicial district in which the plaintiff resides.” The court may enter “upon the
14 pleadings and transcripts of the record, a judgment affirming, modifying, or reversing the
15 decision of the Commissioner of Social Security, with or without remanding the cause for a
16 rehearing.” *Id.*

17 The Commissioner’s findings of fact are conclusive if supported by substantial evidence.
18 *See* 42 U.S.C. § 405(g); *Ukolov v. Barnhart*, 420 F.3d 1002, 1004 (9th Cir. 2005). However, the
19 Commissioner’s findings may be set aside if they are based on legal error or not supported by
20 substantial evidence. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
21 2006); *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). The Ninth Circuit defines
22 substantial evidence as “more than a mere scintilla but less than a preponderance; it is such
23 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
24 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *see also Bayliss v. Barnhart*, 427 F.3d
25 1211, 1214 n.1 (9th Cir. 2005). In determining whether the Commissioner’s findings are
26 supported by substantial evidence, the court “must review the administrative record as a whole,
27 weighing both the evidence that supports and the evidence that detracts from the Commissioner’s
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1 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *see also Smolen v. Chater*, 80
2 F.3d 1273, 1279 (9th Cir. 1996).

3 Under the substantial evidence test, findings must be upheld if supported by inferences
4 reasonably drawn from the record. *Batson v. Commissioner of Social Security*, 359 F.3d 1190,
5 1193 (9th Cir. 2004). When the evidence will support more than one rational interpretation, the
6 court must defer to the Commissioner’s interpretation. *See Burch v. Barnhart*, 400 F.3d 676, 679
7 (9th Cir. 2005); *Flaten v. Sec’y of Health and Human Serv.*, 44 F.3d 1453, 1457 (9th Cir. 1995).
8 Consequently, the issue before the court is not whether the Commissioner could reasonably have
9 reached a different conclusion, but whether the final decision is supported by substantial
10 evidence. It is incumbent on the ALJ to make specific findings so that the court does not
11 speculate as to the basis of the findings when determining if the Commissioner’s decision is
12 supported by substantial evidence. Mere cursory findings of fact without explicit statements as to
13 what portions of the evidence were accepted or rejected are not sufficient. *Lewin v. Schweiker*,
14 654 F.2d 631, 634 (9th Cir. 1981). The ALJ’s findings “should be as comprehensive and
15 analytical as feasible, and where appropriate, should include a statement of subordinate factual
16 foundations on which the ultimate factual conclusions are based.” *Id.*

17 **2. Disability Evaluation Process**

18 The individual seeking disability benefits has the initial burden of proving disability.
19 *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir 1995). To meet this burden, the individual must
20 demonstrate the “inability to engage in any substantial gainful activity by reason of any medically
21 determinable physical or mental impairment which can be expected . . . to last for a continuous
22 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). The individual must also provide
23 “specific medical evidence” in support of her claim for disability. 20 C.F.R. § 404.1514. If the
24 individual establishes an inability to perform her prior work, then the burden shifts to the
25 Commissioner to show that the individual can perform other substantial gainful work that exists
26 in the national economy. *Reddick*, 157 F.3d at 721.

27 The ALJ follows a five-step sequential evaluation process in determining whether an
28 individual is disabled. *See* 20 C.F.R. § 404.1520; *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). If

1 at any step the ALJ determines that he can make a finding of disability or non-disability, a
2 determination will be made, and no further evaluation is required. *See* 20 C.F.R.
3 § 404.1520(a)(4); *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003).

4 Step one requires the ALJ to determine whether the individual is engaged in substantial
5 gainful activity (“SGA”). 20 C.F.R. § 404.1520(b). SGA is defined as work activity that is both
6 substantial and gainful; it involves doing significant physical or mental activities usually for pay
7 or profit. *Id.* § 404.1572(a)-(b). If the individual is engaged in SGA, then a finding of not
8 disabled is made. If the individual is not engaged in SGA, then the analysis proceeds to step two.

9 Step two addresses whether the individual has a medically determinable impairment that
10 is severe or a combination of impairments that significantly limits her from performing basic
11 work activities. *Id.* § 404.1520(c). An impairment or combination of impairments is not severe
12 when medical and other evidence establishes only a slight abnormality or a combination of slight
13 abnormalities that would have no more than a minimal effect on the individual’s ability to work.
14 *Id.* § 404.1521; *see also* Social Security Rulings (“SSRs”) 85-28, 96-3p, and 96-4p.² If the
15 individual does not have a severe medically determinable impairment or combination of
16 impairments, then a finding of not disabled is made. If the individual has a severe medically
17 determinable impairment or combination of impairments, then the analysis proceeds to step three.

18 Step three requires that the ALJ determine whether the individual’s impairments or
19 combination of impairments meet or medically equal the criteria of an impairment listed in 20
20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526. If
21 the individual’s impairment or combination of impairments meets or equals the criteria of a
22 listing and the duration requirement, 20 C.F.R. § 404.1509, then a finding of disabled is made.
23 *Id.* § 404.1520(h). If the individual’s impairment or combination of impairments does not meet
24 or equal the criteria of a listing or meet the duration requirement, then the analysis proceeds to
25 step four.

26 ² SSRs constitute the SSA’s official interpretation of the statute and regulations. *See Bray v.*
27 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1224 (9th Cir. 2009); *see also* 20 C.F.R. § 402.35(b)(1).
28 They are entitled to some deference as long as they are consistent with the Social Security Act and
regulations. *Bray*, 554 F.3d at 1223 (finding that the ALJ erred in disregarding SSR 82-41).

1 The SSA must follow a special technique to evaluate mental impairments at steps two and
2 three. *Id.* § 404.1520a. The special technique requires that the ALJ substantiate the presence of a
3 medically determinable impairment using pertinent symptoms, signs, and laboratory findings, and
4 then to rate the degree of functional limitation that results from the mental impairment in four
5 broad categories: activities of daily living; social functioning; concentration, persistence, or pace;
6 and episodes of decompensation. *Id.* § 404.1520a(b)-(c). If the degree of limitation in the first
7 three categories is none or mild, and the claimant has no episodes of decompensation of extended
8 duration, then the claimant’s mental impairment is not severe, and the analysis proceeds. *Id.* §
9 404.1520a(d)(1).

10 But before moving to step four, the ALJ must first determine the individual’s residual
11 functional capacity (“RFC”), which is a function-by-function assessment of the individual’s
12 ability to do physical and mental work-related activities on a sustained basis despite limitations
13 from impairments. *See id.* § 404.1520(e); *see also* SSR 96-8p. In making this finding, the ALJ
14 must consider all the relevant evidence, such as all symptoms and the extent to which the
15 symptoms can reasonably be accepted as consistent with the objective medical evidence and other
16 evidence. 20 C.F.R. § 404.1529; *see also* SSRs 96-4p and 96-7p. To the extent that statements
17 about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not
18 substantiated by objective medical evidence, the ALJ must make a finding on the credibility of
19 the individual’s statements based on a consideration of the entire case record. The ALJ must also
20 consider opinion evidence in accordance with the requirements of 20 C.F.R. § 404.1527 and
21 SSRs 96-2p, 96-5p, 96-6p, and 06-3p.

22 Step four requires the ALJ to determine whether the individual has the RFC to perform
23 her past relevant work (“PRW”). 20 C.F.R. § 404.1520(f). PRW means work performed either
24 as the individual actually performed it or as it is generally performed in the national economy
25 within the last 15 years or 15 years before the date that disability must be established. In
26 addition, the work must have lasted long enough for the individual to learn the job and performed
27 a SGA. *Id.* §§ 404.1560(b) and 404.1565. If the individual has the RFC to perform her past
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1 work, then a finding of not disabled is made. If the individual is unable to perform any PRW or
2 does not have any PRW, then the analysis proceeds to step five.

3 The fifth and final step requires the ALJ to determine whether the individual is able to do
4 any other work considering her RFC, age, education, and work experience. *Id.* § 404.1520(g). If
5 she is able to do other work, then a finding of not disabled is made. Although the individual
6 generally continues to have the burden of proving disability at this step, a limited burden of going
7 forward with the evidence shifts to the Commissioner. The Commissioner is responsible for
8 providing evidence that demonstrates that other work exists in significant numbers in the
9 economy that the individual can do. *Yuckert*, 482 U.S. at 141-42.

10 Here, the ALJ followed the five-step sequential evaluation process set forth in 20 C.F.R.
11 §§ 404.1520 and 416.920. AR 24-33.

12 At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity
13 from the alleged onset date of June 10, 2014. AR 24.

14 At step two, the ALJ found that Plaintiff had the following medically determinable
15 “severe” impairments: chronic back pain, secondary to degenerative disc disease of the lumbar
16 spine; degenerative joint disease of the right knee with meniscus tear; carpal tunnel syndrome;
17 history of transient ischemic attack with vertigo and chronic headaches; acute gastritis and
18 gastroesophageal reflux disease; hypertension; diverticulitis; depression; and anxiety with panic
19 attacks. *Id.*

20 At step three, the ALJ found that Plaintiff did not have an impairment or combination of
21 impairments that met or medically equaled a listed impairment in 20 C.F.R. Part 404, Subpart P,
22 Appendix 1. AR 25.

23 At steps two and three, the ALJ applied the requisite special technique to evaluate
24 Plaintiff’s mental impairments and found that these impairments cause mild limitation in
25 understanding, remembering, or applying information; in interacting with others; and in adapting
26 or managing oneself. AR 26. The ALJ also found that Plaintiff has a moderate limitation in
27 concentrating, persisting, or maintaining pace. *Id.*

1 At step four, the ALJ found that Plaintiff has the residual functional capacity to perform
2 sedentary work with the following exceptions: Plaintiff can occasionally climb ramps and stairs;
3 she can occasionally balance, stoop, kneel, crouch, and crawl; she can never climb ladders, ropes,
4 or scaffolds; she is limited to frequent, but not constant fingering and handling; and she is limited
5 to detailed, but not complex task jobs. AR 27. The ALJ also found that Plaintiff was unable to
6 perform any PRW. AR 31.

7 At step five, the ALJ considered Plaintiff's age, education, work experience, and RFC,
8 and found there are jobs that exist in significant numbers in the national economy that Plaintiff
9 could perform. AR 32-33. Accordingly, the ALJ concluded Plaintiff was not under a disability at
10 any time from June 10, 2014, through May 18, 2017, the date of the ALJ's decision. AR 33.

11 3. Analysis

12 a. Whether the ALJ erred by discounting the opinion of treating physician Dr. Maurice Alazar, M.D. when determining Plaintiff's RFC

13 i. The parties' arguments

14 Plaintiff moves to remand this matter on grounds that substantial evidence does not
15 support the ALJ's residual functional capacity ("RFC") finding. Plaintiff argues this is so
16 because the ALJ failed to provide specific and legitimate reasons for rejecting the opinion of
17 treating physician Dr. Maurice Alazar, and therefore, created a RFC without any medical
18 opinion.³ Additionally, Plaintiff argues that the ALJ erred by substituting his own judgement for
19 that of a medical doctor when determining the RFC.

20 The Commissioner disagrees. He argues that the ALJ properly relied on Plaintiff's
21 treatment history, her subjective complaints, and objective findings to determine her RFC. He
22 also adds that it is the ALJ—not a medical doctor—who determines a plaintiff's RFC. Finally,
23 the Commissioner argues that the ALJ is neither required to accept all portions of a treating
24 doctor's opinion nor he is required to discuss every piece of evidence in the record.

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27 ³ Plaintiff's claim that the ALJ created a RFC without any medical opinion is inaccurate. This is
28 because the ALJ relied on a consultative examiner's opinion in determining the RFC. AR 29-30. In light
of this misrepresentation, the court will not further address this subpart of the issue.

1 **ii. The ALJ’s decision**

2 The ALJ found that Plaintiff can perform sedentary work with a few exceptions: Plaintiff
3 can occasionally climb ramps and stairs; she can occasionally balance, stoop, kneel, crouch, and
4 crawl; she can never climb ladders, ropes, or scaffolds; she is limited to frequent, but not constant
5 fingering and handling; and she is limited to detailed, but not complex task jobs. AR 27. In
6 determining her RFC, the ALJ relied on objective medical evidence (e.g., nerve conduction test,
7 MRI studies, etc.), medical source opinions, Plaintiff’s treatment history, and Plaintiff’s pain and
8 symptom testimony. AR 28-31. In his evaluation of the medical source opinions, the ALJ gave
9 great weight to the state’s mental health consultative examiner, little weight to state agency
10 medical consultants, some weight to Dr. Alazar’s opinion that Plaintiff has sedentary limitations
11 and that she would have four work absences a month, and little weight to Dr. Alazar’s opinion
12 that Plaintiff is unable to work. AR 30.

13 **iii. How an ALJ may weigh opinion evidence**

14 The ALJ’s role is to consider the evidence, state an interpretation thereof, and make
15 findings accordingly. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). The ALJ is not
16 required to discuss every piece of evidence in the record. *Vincent on Behalf of Vincent v.*
17 *Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984). And an ALJ may choose to give more weight
18 to an opinion that is more consistent with the evidence in the record. 20 C.F.R. § 416.927(c)(4)
19 (“[T]he more consistent an opinion is with the record as a whole, the more weight we will give to
20 that opinion.”); *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996). Relevant factors when
21 evaluating a medical opinion include the amount of relevant evidence that supports the opinion,
22 the quality of the explanation provided in the opinion, and the consistency of the medical opinion
23 with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn v.*
24 *Astrue*, 495 F.3d 625, 631 (9th Cir. 2007).

25 But when faced with contradictory opinions, the ALJ must give specific and legitimate
26 reasons supported by substantial evidence in the record to reject a treating physician’s opinion.
27 *Belanger v. Berryhill*, 685 F. App’x 596, 598 (9th Cir. 2017) (citing *Reddick*, 157 F.3d at 725).
28 Similarly, if an ALJ gives a treating physician’s opinion “little weight,” the ALJ also must

1 provide specific and legitimate reasons for doing so. *Burns v. Berryhill*, 731 F. App'x 609, 612
2 (9th Cir. 2018). The ALJ “can meet this burden by setting out a detailed and thorough summary
3 of the facts and conflicting evidence, stating his interpretation thereof, and making findings.”
4 *Magallanes v. Bowen*, 881 F.3d 747, 751 (9th Cir. 1989) (quoting *Cotton v. Brown*, 799 F.2d
5 1403, 1408 (9th Cir. 1986)). Put another way, when discounting Dr. Salazar’s opinion, “[t]he
6 ALJ must do more than offer his conclusions. He must set forth his own interpretations and
7 explain why...[the other doctors’ opinions]..., rather than...[Dr. Salazar’s]..., are correct.”
8 *Reddick*, 157 F.3d at 725. This is a necessary step so that the reviewing court does not speculate
9 as to the basis of the findings when determining whether substantial evidence supports the ALJ’s
10 decision.

11 **iv. Whether the ALJ erred in weighing Dr. Alazar’s opinion**
12 **evidence**

13 Dr. Maurice Alazar, M.D. was Plaintiff’s treating physician from August 2015 through, at
14 least, October 2016. *See, e.g.*, AR 469-480, 532-556; 583-585; 601-605. On September 8, 2015,
15 Dr. Alazar filled out a Physical Assessment questionnaire. AR 452-453. The questionnaire
16 provided a series of check boxes allowing the doctor to indicate the severity of Plaintiff’s
17 conditions. *Id.* Dr. Alazar checked boxes expressing the following opinions: (1) Plaintiff needs
18 to have at least thirty-minute breaks every two-to-three hours, (2) Plaintiff can walk fewer than
19 two city blocks, (3) Plaintiff can sit up to four hours in an eight-hour workday, (4) Plaintiff can
20 stand up to one hour in an eight-hour workday, (5) Plaintiff can occasionally lift ten pounds or
21 fewer, (6) Plaintiff can never lift more than twenty pounds, and (7) Plaintiff would miss at least
22 four days of work each month. AR 452-453. Dr. Alazar also opined that Plaintiff could not
23 work. AR 598.

24 The ALJ gave two reasons for discounting Dr. Alazar’s opinion regarding Plaintiff’s
25 inability to work: (1) It was an issue reserved for the Commissioner, and (2) it was not supported
26 by any evidence. AR 30.

27 First, the ALJ may not reject a treating physician’s opinion simply because it touches on
28 an issue that is reserved for the Commissioner. *Esparza v. Colvin*, 631 F. App'x 460, 462 (9th

1 Cir. 2015) (citing *Holohan v. Massanari*, 246 F.3d 1195, 1202-1203 (9th Cir. 2001)). Although
2 the ALJ explained that he gave little weight to Dr. Alazar's opinion because it touched on an
3 issue reserved for the Commissioner, the ALJ also reasoned that the doctor's opinion lacked any
4 supporting evidence. AR 30. Therefore, to determine whether the ALJ erred in weighing Dr.
5 Alazar's opinion also requires determining whether the ALJ's second reason was specific and
6 legitimate.

7 Second, because Dr. Alazar's opinion regarding Plaintiff's functional capacity was
8 contradicted by the reports of an examining and non-examining physician, the ALJ could reject
9 the doctor's opinion only by providing specific and legitimate reasons. *Bayliss*, 427 F.3d at 1216
10 (citing *Lester v. Chater*, 81 F.3d 821, 830-831 (9th Cir. 1995)). The ALJ found that "there is no
11 evidence to support" Dr. Alazar's opinion that Plaintiff is unable to work. But this conclusion
12 lacks the sufficient specificity required. Even though the ALJ included a string of general
13 citations to the record,⁴ he failed to explain in detail what the conflicting evidence was and his
14 interpretation of this conflicting evidence. *Thomas*, 278 F.3d at 957 (citing *Magallanes*, 881 F.3d
15 at 751). This failure to explain is significant because it prevents the court from having a point of
16 reference to determine which components of these exhibits conflict with Dr. Alazar's opinion.
17 For example, Exhibit 4F, to which the ALJ cites, has multiple medical records, including a
18 November 13, 2014 visit with Dr. Shoaib Khalil, M.D. diagnosing Plaintiff with neuropathy and a
19 sleep disorder; a right knee MRI performed on December 15, 2014 evidencing some damage, and
20 a December 18, 2014, visit with Dr. Khalil for an acute respiratory infection. Further, some of
21 the evidence to which the ALJ cites appear to actually support Dr. Alazar's findings. For
22 example, Exhibit 1F diagnoses Plaintiff with migraines. AR 400. And Exhibit 8F contains a
23 prescription for medication for her persistent headaches. AR 447. These records could be
24 consistent with Dr. Alazar's opinion that Plaintiff would require at least thirty-minute breaks
25 every two-to-three hours, or even, that she could miss more than four days of work per month.

26 ⁴ The ALJ writes, "Furthermore, little weight is given to the opinion that [Plaintiff] is unable to
27 work, as there is no evidence to support this finding (Ex. 1F, 2F, 3F, 4F, 5F, 8F, 10F, 11F, 12F, 17F, 18F,
28 19F, 21F, 22F, 23F, 27F, and 28F)."

1 AR 453. In all events, the ALJ's citations to the record do not allow the court to determine
2 (without guessing) whether the ALJ's reasons for rejecting Dr. Alazar's opinion were legitimate.

3 Although the Commissioner is correct in arguing that the ALJ is not required to discuss
4 every piece of evidence in the record or every sentence of a medical source's opinion, the
5 Commissioner glosses over the ALJ's conclusory reason for discounting Dr. Alazar's opinion.
6 Accordingly, because the ALJ in the instant case does not provide specific and legitimate reasons
7 for discounting Dr. Alazar's opinion, the court holds that the ALJ erred. *Nguyen*, 100 F.3d at
8 1464 ("Where an ALJ does not explicitly reject a medical opinion or set forth specific, legitimate
9 reasons for crediting one medical opinion over another, he errs."); *see also Lewin*, 654 F.2d at
10 634 (The ALJ's findings "should be as comprehensive and analytical as feasible, and where
11 appropriate, should include a statement of subordinate factual foundations on which the ultimate
12 factual conclusions are based.").

13 The next step is to determine whether the ALJ's error is harmless. An ALJ's error is
14 harmless only if it is found to be "inconsequential to the ultimate nondisability determination"
15 and if the court "can confidently conclude that no reasonable ALJ, when [not making the same
16 error] could have reached a different disability determination." *Stout*, 454 F.3d at 1055-1056; *see*
17 *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). This court cannot say with certainty that
18 another ALJ, upon crediting Dr. Alazar's opinion, would not have reached a different disability
19 determination. Accordingly, this error was not harmless.

20 **b. Whether substantial evidence supports the ALJ's determination that**
21 **Plaintiff had the transferability skills to work as a skilled investigator**

22 **i. The parties' arguments**

23 Plaintiff next moves to remand this matter on the grounds that substantial evidence does
24 not support the ALJ's finding that Plaintiff possesses the transferrable skills to perform other
25 work in the national economy. This is because the ALJ relied on the vocational expert ("VE")
26 who testified that Plaintiff could perform skilled work because of both her previous jobs and the
27 specialized training she received in 2010. According to Plaintiff, the ALJ could not consider this
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1 specialized training because it fell outside the five-year window permitted by the Programs
2 Operations Manual Systems (“POMS”) guidelines.

3 The Commissioner disagrees. First, he argues that Plaintiff waived this issue because she
4 was represented by counsel at the ALJ hearing and that her counsel failed to question the VE on
5 this issue. The Commissioner next argues that, absent waiver, the ALJ was not required to follow
6 the POMS guidelines because they are not binding.

7 **ii. The ALJ’s decision and the vocational expert’s testimony**

8 The ALJ relied on the VE to find that Plaintiff could not perform her past relevant work,
9 but that she could use the management, problem-solving, and customer service skills developed in
10 these prior positions to work as a service investigator and insurance application investigator. AR
11 32. Both investigator positions are skilled positions. AR 87-88.

12 The VE testified at the ALJ hearing that Plaintiff’s past work experience combined with
13 her 2010 private investigation training would allow Plaintiff to work the sedentary, yet skilled
14 positions of service investigator and insurance application investigator. *Id.*

15 **iii. Whether substantial evidence supports the ALJ’s**
16 **determination that Plaintiff had the transferability skills to work as a skilled investigator**

17 According to SSR 82-41, “Reduced residual functional capacity (RFC) and advancing age
18 are important factors associated with transferability because reduced RFC limits the number of
19 jobs within an individual’s physical or mental capacity to perform, and advancing age decreases
20 the possibility of making a successful vocational adjustment.” Because a plaintiff’s RFC informs
21 her transferability, and because the court has held that the ALJ erred in determining Plaintiff’s
22 RFC, the court will not reach this issue.

23 **III. CONCLUSION AND ORDER**


24 Accordingly, IT IS THEREFORE ORDERED that Plaintiff’s Motion for Reversal and
25 Remand (ECF No. 19) be GRANTED.
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1 IT IS FURTHER ORDERED that this case is remanded for further proceedings regarding
2 Plaintiff's residual functional capacity ("RCF") finding and, in turn, any effect the RFC finding
3 has on the jobs Plaintiff can perform.

4 IT IS FURTHER ORDERED that the Commissioner's Cross-Motion to Affirm and
5 Response to Plaintiff's Motion for Reversal and Remand (ECF Nos. 24, 25) be DENIED.

6 IT IS FURTHER ORDERED that the Clerk of Court must enter judgment in favor of
7 Plaintiff and against the Commissioner.

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9 DATED: March 13, 2020

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12 BREND A WEKSLER
13 UNITED STATES MAGISTRATE JUDGE
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